IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

WP(C).No. 26390 of 2006(N)

PETITIONER:

T.A.VIJAYAN, THAIPPARAMBIL HOUSE,
ALISSERY WARD, ALAPPUZHA-1.

BY ADV. SRI.K.K.SATHEESH

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY**
   THE SECRETARY, GENERAL ADMINISTRATION (FFP.B)
   DEPARTMENT, GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **THE DISTRICT COLLECTOR,**
   ALAPPUZHA.

BY GOVERNMENT PLEADER SRI.K.V.MANOJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.26390/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE APPLICATION ALONGWITH PETITIONER'S AFFIDAVIT DULY ATTESTED BY THE REVENUE DIVISIONAL OFFICER & SUB- DIVISIONAL MAGISTRATE, ALLEPPEY.

EXT.P2:- COPY OF THE NARC ISSUED BY THE CJM COURT, ALLEPPEY.

EXT.P3:- COPY OF THE LETTER DT. 22.2.00 ISSUED ON BEHALF OF THE 2ND RESPONDENT ASKING THE PETITIONER TO APPEAR BEFORE THE DISTRICT ADVISORY COMMITTEE ON 29.2.2000.

EXT.P4:- COPY OF THE PKC ISSUED BY SRI.H.K.CHAKRAPANI DT. 10.11.2000.

EXT.P5:- COPY OF THE LETTER DT. 6.11.03 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P6:- COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT DT. 3.2.04.

EXT.P7:- COPY OF THE PKC ISSUED BY SRI. H.K.CHAKRAPANI DT. 3.2.04.

EXT.P8:- COPY OF THE ORDER NO.119/PVS/104/99-FF(SZ) DT. 18.6.03 ISSUED BY THE GOVERNMENT OF INDIA, MINISTRY OF HOME AFFAIRS GRANTING CENTRAL PENSION TO SRI.H.K.CHAKRAPANI

EXT.P9:- COPY OF THE JUDGMENT DT. 4.1.06 PASSED BY THIS HONOURABLE COURT IN WP(C) NO. 10362/2004.

EXT.P10:- COPY OF THE NARD DT. 25.4.06 ISSEUD BY THE DISTRICT SUPDT. OF POLICE, ALAPPUZHA.

EXT.P11:- COPY OF THE LETTER DT. 12.5.06 ISSUED BY THE 1ST RESPONDENT.

EXT.P12:- COPY OF THE MINUTES OF THE MEETING OF THE DISTRICT ADVISORY COMMITTEE HELD ON 29.2.2000.

EXT.P13:- COPY OF THE LETTER NO.63819/FFP.B3/05/GAD DT. 30.10.06 ISSUED BY THE 1ST RESPONDENT.

/TRUE COPY/

P.A.TO JUDGE

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T.R.RAMACHANDRAN NAIR, J.

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WP(C).No.26390 of 2006-N.

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Dated this the 3rd day of August, 2007.

J U D G M E N T

The petitioner is an applicant for the Kerala Freedom Fighters' Pension under the relevant scheme. The claim is based on the participation in the Punnapra-Vayalar struggle which has been recognised for grant of pension. Against the petitioner an arrest warrant was issued by the Special Magistrate Court, Alappuzha in connection with Case No.P.E.7/1122 M.E. and in order to evade the arrest he had gone underground for about 18 months from 7.3.1122 M.E. to 6.9.1123 M.E. and it is claimed that as such he is entitled for the benefit of the pension. Ext.P1 is the first application submitted by the petitioner way back in 26.6.1981 which was routed through the Tahsildar, Ambalapuzha. Ext.P2 is the certificate (NARC) issued to the petitioner from the Chief Judicial Magistrate Court, Alappuzha stating that the records of the year 1122 have already been destroyed. It is the case of the petitioner that the District Advisory Committee, Alappuzha had conducted an enquiry about Ext.P1 on 29.2.2000 and the deliberations of the Committee will show that the Committee found that the petitioner is a bonafide freedom

fighter and they decided to recommend his case.

2. The petitioner in support of his application had produced the Personal Knowledge Certificate (PKC) of Shri.H.K.Chakrapani who had undergone imprisonment in the freedom struggle (Ext.P4). Since at the relevant time Shri.H.K.Chakrapani had not been a recipient of Central pension, the petitioner's case was rejected as per Ext.P5. Again the petitioner on grant of Central Freedom Fighters Pension to him filed a detailed representation as per Ext.P6 wherein he has produced once again Ext.P7 Personal Knowledge Certificate along with the order granting Central pension to the said freedom fighter (Ext.P8). Since there was delay in considering the application he filed WP(C).No.10362/2004. This Court noticed the submission made by the learned Government Pleader that a review application was received and which was sent to the office of the District Collector for enquiry and report and he has already submitted a report to the Government. This Court was pleased to direct the 1st respondent to pass final orders on Ext.P6 therein in accordance with law within three months from the date of receipt of a copy the judgment.

3. The petitioner was heard by the Government before passing Ext.P11 and at the time of hearing he had produced Ext.P10 certificate (NARC) from the Superintendent of Police, Alappuzha stated that the records

are not available in that office also.

4. A reading of Ext.P11 shows that inspite of the direction issued by this Court the Government has approached the issue in a different manner which is too technical one. It cannot be disputed that the petitioner applied for pension as per Ext.P1 application dated 26.6.1981 which fact is admitted in para.3 of the counter-affidavit. It cannot also be disputed that application was rejected mainly for the reason that the certifier at that time was not a recipient of Central pension. Therefore actually it is not a case where Ext.P6 was a fresh application. But while considering the issue as stated by this Court in Ext.P9 judgment the Government was harping the one issue ie., his application is belated as it is submitted after the Government Circular dated 31.12.1993 was brought into force. It is reiterated in paragraph 3 of the order Ext.P11 that there is a specification that applications received after 31.3.1994 will be considered only on production of documentary evidence from official records such as warrant of arrest. According to me, the said reason is not available in the light of the fact that this application is of the year 1981 and Ext.P6 which was directed to be considered by Ext.P9 judgment was only a petition for review and not a fresh application. Therefore, the approach made in Ext.P11 is fundamentally wrong.

5. The finding in Ext.P11 is that the petitioner had failed to

produce necessary records. Going by the scheme when the applicant has produced the non-availability of records certificate, the authority is entitled to consider the certificates issued from co-prisoners. The certificate herein is one issued by Shri.H.K.Chakrapani who is a recipient of Central pension as evident by Ext.P8. The personal knowledge certificate Ext.P7 also shows that he had suffered actual imprisonment for more than five years as per the certificate it has been clearly certified that the petitioner is a bonafide freedom fighter who remained underground for more than six months from 7.3.1122 M.E. to 6.9.1123 M.E. Still the Government without even considering the validity of the advise of the District Advisory Committee rejected the application stating that there is no clear and concrete evidence to show that the petitioner had submitted application with acceptable and reliable documents within the time limit for submitting applications for pension under the scheme. It is also stated that NARC produced from the office of the Superintendent of Police is not clear in material particulars.

6. Ext.P12 is the proceedings of the District Advisory Committee wherein they have considered his credentials and has recommended for pension to him. This is not disputed in the counter-affidavit. In the counter-affidavit also what is reiterated is the case relying upon the Circular dated 31.12.1993. I have already held that the said reason is not available to the

Government.

7. The learned counsel for the petitioner invited my attention to the judgment of this Court in WP(C).No.26694/2003 wherein this Court in the writ petition filed by Shri.P.K.Chellappan directed the Government to consider the application in the light of the jail records of Shri.H.K.Chakrapani. It is pointed out that after considering the application in the light of the directions of this Court the Government has granted pension to him as per Ext.P13.

8. Therefore, evidently the Government cannot treat applicants in a different manner when certificate from same person is produced. Ext.P13 will show that after the judgment in WP(C).No.26694/2003 the Government was pleased to grant sanction for pension to the applicant therein. On a perusal of the documents produced herein, I find that the claim of the petitioner is well established and the reasons stated in Ext.P11 are totally unsustainable. It is pertinent to note that in the counter-affidavit there is no case that the petitioner is not a bonafide freedom fighter. What is mentioned is that further evidence is required in view of Circular dated 31.12.1993. It is well settled that a Circular cannot amend or restrict the scope of any statute, rules or notification.

9. Hence I find that the application of the petitioner ought to have been

favourably considered and Ext.P11 is passed plainly against the directions in judgment Ext.P9 also. Therefore, Ext.P11 is quashed and the respondents are hereby directed to issue consequential orders sanctioning pension to the petitioner within a period of six weeks from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-